RECORD AND BRIEFS

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No. 16-534

In the Supreme Court of the United States

JENNY RUBIN, ET AL., PETITIONERS

v.

ISLAMIC REPUBLIC OF IRAN, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
CHAD A. READLER
Acting Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
HASHIM M. MOOPPAN
Deputy Assistant Attorney General
ZACHARY D. TRIPP
Assistant to the Solicitor General
SHARON SWINGLE
BENJAMIN M. SHULTZ
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

RICHARD C. VISEK
Acting Legal Adviser
Department of State
Washington, D.C. 20520

QUESTION PRESENTED

Ordinarily, a person who obtains a judgment against a foreign state cannot execute against the property of that state's agencies or instrumentalities, because they are separate juridical entities. See *First Nat'l City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611 (1983) (*Bancec*). In 28 U.S.C. 1610(g), Congress overrode that barrier in certain cases involving state-sponsored terrorism, allowing victims to enforce a judgment entered against a foreign state by piercing the veil between the state and its agencies and instrumentalities, thereby treating the property of an agency or instrumentality as property of the state itself for purposes of execution. Section 1610(g) provides, however, that such property is subject to execution only "as provided in this section." *Ibid.* The question presented is:

Whether, in addition to piercing the veil, Section 1610(g) also enables execution against foreign sovereign property that is not subject to execution as provided elsewhere in Section 1610.

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INTEREST OF THE UNITED STATES

This case concerns the interpretation of the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1602 *et seq.* Litigation against foreign states in U.S. courts can have significant foreign affairs implications for the United States, and can affect the reciprocal treatment of the United States in the courts of other nations. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

Although the United States agrees with respondents that the court of appeals correctly resolved the question presented in this case, the United States emphatically condemns the terrorist actions that gave rise to this case, and expresses its deep sympathy for the victims and their family members who have pursued legal action against Iran. The United States is committed to vigorously pursuing those responsible for violence against U.S. nationals.

STATEMENT

Ordinarily, a person who obtains a judgment against a foreign state cannot execute against the property of that state's agencies or instrumentalities, because they are separate juridical entities. See *First Nat'l City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611 (1983) (*Bancec*). In 28 U.S.C. 1610(g), Congress overrode that rule in certain cases involving state-sponsored terrorism, allowing victims to pierce the veil between a foreign state and its agencies and instrumentalities, and thereby to treat the property of an agency or instrumentality as property of the state itself for purposes of execution. Section 1610(g) provides, however, that such property is subject to execution "as provided in this section." *Ibid.* The question in this case is whether subsection (g) makes property subject to execution only when Section 1610 otherwise provides an exception to the immunity of foreign sovereign property from execution, or whether it is a freestanding exception that makes property subject to execution regardless of what is otherwise provided in that Section. To answer that question, it is important first to understand the statutory context.

1. a. The FSIA comprehensively regulates the immunity of foreign sovereigns from suit and the immunity of foreign sovereign property from execution. See *Republic of Argentina* v. *NML Capital, Ltd.*, 134 S. Ct. 2250, 2255-2256 (2014). With respect to jurisdictional immunity, the FSIA provides (subject to certain international agreements) that a foreign state and its agencies and instrumentalities "shall be immune" from suit, except as provided in Sections 1605 through 1607. 28 U.S.C. 1604; see 28 U.S.C. 1603(a) (defining "foreign state" to include an agency or instrumentality).

In 1996, Congress added a "terrorism exception" to the FSIA. See 28 U.S.C. 1605(a)(7) (Supp. II 1996). That exception provided that a designated state sponsor of terrorism was not immune from suit seeking money damages for personal injury or death "caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support" for such acts. *Ibid.*

In the National Defense Authorization Act for Fiscal Year 2008 (NDAA), Pub. L. No. 110-181, § 1083(a)(1) and (b)(1), 122 Stat. 338-342, Congress replaced that provision with a new version of the terrorism exception, codified at 28 U.S.C. 1605A. Section 1605A abrogates jurisdictional immunity from suit, creates a private right of action for certain injuries caused by designated state sponsors of terrorism, and permits an award of punitive damages in such an action. 28 U.S.C. 1605A(a) and (c). Congress also allowed plaintiffs in certain circumstances to convert suits under the former version of the terrorism exception to suits under the current version. NDAA § 1083(c)(2), 122 Stat. 342-343.

b. The FSIA's rules regarding immunity from execution are independent of its rules regarding immunity from suit, and the exceptions to execution immunity are "narrower." *NML Capital*, 134 S. Ct. at 2256. Specifically, the FSIA provides (subject to certain international agreements) that the property of a foreign state, and its agencies and instrumentalities, "shall be immune from attachment arrest and execution," except as provided in 28 U.S.C. 1610 and 1611. 28 U.S.C. 1609.[1]

Section 1610 sets forth limited exceptions to the general rule of immunity in Section 1609. It consists of

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[1] This brief uses "execution" to refer to attachment, arrest, and execution.

seven subsections, (a) through (g). Subsections (a) and (b) create exceptions for property with a commercial nexus to the United States. Subsection (a) provides that the property of a foreign state, agency, or instrumentality "shall not be immune" from execution if that property is "used for a commercial activity in the United States" and additional criteria are satisfied. 28 U.S.C. 1610(a); see 28 U.S.C. 1603(a). Subsection (b) creates a further exception for the property of an agency or instrumentality specifically. Unlike property covered by subsection (a)—which must *itself* be used in commercial activity—subsection (b) provides that any property of an agency or instrumentality "shall not be immune" from execution if the agency or instrumentality is "engaged in commercial activity in the United States" and additional criteria are satisfied. 28 U.S.C. 1610(b).

Under the additional criteria in subsections (a) and (b), property with the requisite commercial nexus is not immune from execution if the judgment that the plaintiff is seeking to enforce relates to a claim for which the entity "is not immune" under the current or former version of the terrorism exception. 28 U.S.C. 1610(a)(7) and (b)(3). Accordingly, subsections (a)(7) and (b)(3) enable a person with a money judgment obtained under the terrorism exception to execute against property with the requisite commercial nexus.

Subsections (c), (d), and (e) are not relevant here. Pets. Br. 39; see 28 U.S.C. 1610(c) (requiring notice in certain cases before an "execution referred to in subsections (a) and (b)"); 28 U.S.C. 1610(d) (prejudgment attachment with an express waiver); 28 U.S.C. 1610(e) (execution against vessels).

Subsection (f) creates a mechanism for executing terrorism judgments against blocked property, but that

mechanism has never been operative. Paragraph (f)(1) provides that, "[n]otwithstanding any other provision of law," certain assets blocked under various sanctions programs "shall be subject to execution" of "any judgment relating to a claim for which a foreign state (including any agency or instrumentality o[f] such state) claiming such property is not immune" under either version of the terrorism exception. 28 U.S.C. 1610(f)(1). Paragraph (f)(2) provides that the State Department and Treasury Department "should make every effort" to assist terrorism judgment creditors in identifying executable property. 28 U.S.C. 1610(f)(2). Paragraph (f)(3) provides, however, that "[t]he President may waive any provision of paragraph (1) in the interest of national security." 28 U.S.C. 1610(f)(3). Invoking that authority, the President waived paragraph (f)(1) before it went into effect. 65 Fed. Reg. 66,483 (Oct. 28, 2000); see 63 Fed. Reg. 59,201 (Oct. 21, 1998) (waiver of predecessor statute).

Subsection (g) is the heart of this case. It provides:

> Subject to [certain protections for third-party joint property holders], the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—
>
> (A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

28 U.S.C. 1610(g)(1). Congress added subsection (g) in 2008, when it adopted the current version of the terrorism exception and amended subsections (a) and (b) to apply to such judgments. NDAA § 1083(b)(3)(D), 122 Stat. 341-342.

Subsection (g) permits creditors in covered terrorism cases to "pierce the veil" when seeking to enforce their judgment, when otherwise they would ordinarily be unable to do so. In *Bancec*, this Court recognized a general presumption that courts should respect the separate juridical status of a state's agencies and instrumentalities. 462 U.S. at 626-628. Accordingly, under *Bancec*, a creditor of a judgment against a foreign state ordinarily cannot satisfy that judgment by executing against the property of an agency or instrumentality. The presumption of separateness may be overcome as appropriate under the totality of the circumstances, however, if the instrumentality is "so extensively controlled by its owner that a relationship of principal and agent is created," or if recognizing the entity's separate juridical status would "'work fraud or injustice.'" *Id.* at 629 (quoting *Taylor* v. *Standard Gas & Elec. Co.*, 306

U.S. 307, 322 (1939)); see *id.* at 633. Some courts had identified "*Bancec* factors" to consider in making that determination. See *Flatow* v. *Islamic Republic of Iran*, 308 F.3d 1065, 1071 n.9 (9th Cir. 2002), cert. denied, 538 U.S. 944 (2003); *Walter Fuller Aircraft Sales, Inc.* v. *Republic of the Philippines*, 965 F.2d 1375, 1380 n.7 (5th Cir. 1992). The five factors listed in subsection (g) parallel almost perfectly those factors. Pet. App. 23-26.

Subsection (g) thus makes it easier to pierce the veil in enforcing covered terrorism judgments: A creditor in such a case may enforce a judgment against a state by executing against property of the state *and* its agencies or instrumentalities. This enhanced veil piercing also extends to corporations owned by the state, agency, or instrumentality. See 28 U.S.C. 1610(g)(1) (including "property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity"); *Dole Food Co.* v. *Patrickson*, 538 U.S. 468, 473-478 (2003) (a wholly owned subsidiary of an agency or instrumentality ordinarily is not itself an agency or instrumentality).

Subsection (g) provides, however, that such property is subject to execution "as provided in this section." 28 U.S.C. 1610(g)(1). The question in this case is whether that means the creditor must satisfy an exception to immunity as provided elsewhere in Section 1610, or whether subsection (g) not only provides for veil piercing but also eliminates the need to satisfy an exception to immunity elsewhere in Section 1610.

2. a. Petitioners hold a $71.5 million judgment against Iran arising out of Iran's role in a 1997 terrorist attack. Pet. App. 1-2. They obtained the judgment under the former version of the terrorism exception, then converted it to a judgment under the current version.

Id. at 5-6 & n.1; see p. 3, *supra*. Petitioners registered their judgment in the Northern District of Illinois and sought to execute against the Persepolis Collection, a collection of ancient Persian artifacts. Pet. App. 2-3. The collection is owned by Iran and has been on loan to the University of Chicago since 1937 for research, translation, and cataloging. *Id.* at 4-5, 46. The collection comprises "roughly 30,000 clay tablets and fragments containing some of the oldest writings in the world." *Id.* at 4-5.

The district court granted summary judgment to respondents, holding that the Persepolis Collection is immune from execution. Pet. App. 43-71. First, the court held that the commercial-activity exception in Section 1610(a) does not permit execution. The court concluded that subsection (a) applies only when the foreign state itself uses the property for commercial activity, and Iran had not so used the Persepolis Collection. *Id.* at 50-57. Second, the court held that Section 1610(g) does not provide a basis for execution either, because it is not a freestanding exception to immunity. *Id.* at 57-62. Rather, the court concluded, subsection (g) permits execution only "*as provided in this section*," and no other provision in Section 1610 provides an exception to immunity here. *Id.* at 61.[2]

b. The court of appeals affirmed. Pet. App. 1-38. The court of appeals agreed with the district court that subsection (a) did not permit execution because it

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[2] The district court also held that the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, § 201(a), 116 Stat. 2337 (28 U.S.C. 1610 note), did not authorize execution because the Persepolis Collection is not a "blocked asset[]," as required under TRIA. Pet. App. 65-67. The court of appeals affirmed that determination, *id.* at 35-38, and that ruling is not at issue here.

reaches only property used in commercial activity by the foreign state itself, not by a third party. *Id.* at 16-21. The court of appeals also agreed with the district court (and the United States) that subsection (g) does not provide a basis for executing against the artifacts because it is not a freestanding exception to immunity and no other provision of Section 1610 provided for execution. *Id.* at 21-35. The court of appeals explained that subsection (g)'s phrase "as provided in this section" means that an individual must show that an immunity exception elsewhere in Section 1610 applies. *Ibid.* The court recognized that the Ninth Circuit had reached a contrary conclusion, but it found the Ninth Circuit's decision unpersuasive. *Id.* at 34; see *Bennett* v. *Islamic Republic of Iran*, 825 F.3d 949 (9th Cir. 2016), petition for cert. pending, No. 16-334 (filed Sept. 12, 2016).

SUMMARY OF ARGUMENT

Petitioners do not dispute that 28 U.S.C. 1610(g) serves to pierce the veil between a foreign state and its agencies and instrumentalities. They contend, however, that this provision does two things, not one. In particular, they contend that subsection (g) also creates a freestanding exception to immunity that allows execution against property even when no other provision of Section 1610 would allow for it. Petitioners are incorrect.

Section 1610(g) is not a freestanding exception to immunity because it subjects property to execution only "as provided in this section." 28 U.S.C. 1610(g)(1). It thus is expressly tied to the other provisions of Section 1610. Petitioners fail to give that clause any meaning, and indeed effectively interpret it to mean "regardless of what is provided in this section."

Petitioners posit that "as provided in this section" might refer solely to subsection (f), or might actually be

a mistake that should refer not to "this section" (Section 1610) of the U.S. Code but instead to the Section of the Public Law that added subsection (g) to 28 U.S.C. 1610. But neither of those interpretations gives "as provided in this section" any practical significance. Subsection (f)'s execution provisions were waived by the President before subsection (g) was enacted and have never been operative. And the relevant section of the Public Law (Section 1083 of the NDAA) does not provide for execution either. In any event, petitioners' interpretations lack merit. Congress would not say "this section" if it meant only subsection (f). And there is no basis for concluding that "this section" in 28 U.S.C. 1610(g) refers to anything but 28 U.S.C. 1610 itself.

Petitioners' interpretation of subsection (g) would also defeat limitations Congress expressly imposed on execution elsewhere in the FSIA. In 28 U.S.C. 1610(a)(7), Congress enabled a victim holding a judgment under the current version of the terrorism exception to execute against the state's property—but only when it is used for commercial activity in the United States. Yet petitioners' interpretation of subsection (g) would enable the same creditor to execute the same judgment against the same state's property without that crucial limitation. Subsection (g) would thus render Congress's decision to impose that limitation on those creditors in subsection (a)(7) entirely superfluous.

The legislative history of subsection (g) further illustrates that Congress was focused solely on piercing the veil in terrorism cases—and not on overriding the limitations on execution that are set forth elsewhere in Section 1610. Moreover, interpreting subsection (g) as unmoored from Section 1610's limitations would threaten to

cause the reciprocity and other foreign-relations repercussions that Congress enacted those constraints to avoid. Indeed, this case illustrates the point. Seizing a collection of ancient Persian artifacts on loan to a university museum presents foreign-policy ramifications that are different in kind from executing against state-owned property used in commercial activity. If Congress had intended for subsection (g) to reach property without regard to the commercial-nexus or other requirements of Section 1610, it would have said so. It would not have said that property is subject to execution only "as provided in th[at] section." 28 U.S.C. 1610(g)(1).

ARGUMENT

SECTION 1610(g) DOES NOT CREATE A FREESTANDING EXCEPTION TO THE IMMUNITY OF FOREIGN SOVEREIGN PROPERTY FROM EXECUTION

A. Section 1610(g) Provides For Veil Piercing

1. The analysis under the FSIA "begin[s], as always, with the text of the statute." *Permanent Mission of India to the U.N.* v. *City of New York*, 551 U.S. 193, 197 (2007). The text establishes that subsection (g) provides for veil piercing, but does not in addition allow execution regardless of the other provisions of Section 1610. Rather, it subjects additional entities' property to execution only "as provided in th[at] section." 28 U.S.C. 1610(g). Subsection (g) thus is not a stand-alone exception to immunity; it is expressly linked to the other exceptions in Section 1610.

a. Subsection (g) consists of a single sentence. It provides in relevant part:

> [T]he property of a foreign state against which a judgment is entered under Section 1605A, and the

> property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of [the *Bancec* factors].

28 U.S.C. 1610(g)(1). Because this sentence is dense, it helps to break it into its components.

First, there must be "a foreign state against which a judgment is entered under Section 1605A." 28 U.S.C. 1610(g). Section 1605A is the current version of the terrorism exception, so subsection (g) comes into play when a victim of terrorism has obtained a judgment under that provision against a designated state sponsor of terrorism.

Second, subsection (g) overrides the ordinary rule for piercing the veil in FSIA cases. Ordinarily, a creditor with a judgment against a foreign state can execute only against that state's own property; if property is owned not by the state itself but by an agency or instrumentality (or a corporation or other separate entity owned by the state, agency, or instrumentality), it would be out of reach, unless unusual circumstances justified piercing the veil and treating that separate entity as if it were the foreign state itself. See *First Nat'l City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611, 629 (1983); see also *Dole Food Co.* v. *Patrickson*, 538 U.S. 468, 473-478 (2003).

Subsection (g) plainly overrides that rule for creditors of judgments obtained under the current version of the terrorism exception: Those creditors can potentially reach not merely "the property of [the] foreign

state" itself, but also "the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity." 28 U.S.C. 1610(g)(1). And such veil piercing may occur "regardless of" the *Bancec* factors that courts would otherwise have considered. *Ibid.*; see Pet. App. 23-26.

Third, and critical to the resolution of this case, subsection (g) then specifies what can happen to the property in that broader pool: It is "subject to attachment in aid of execution, and execution, upon that judgment *as provided in this section.*" 28 U.S.C. 1610(g)(1) (emphasis added). That is, the property of the state, agency, or instrumentality (including property that is or is held in another separate entity) is subject to execution "as provided in" other provisions of Section 1610.

Subsection (g) thus makes it easier for victims of terrorism to pierce the veil between a state and its agencies and instrumentalities. By the statute's plain terms, however, a plaintiff can subject those entities' property to execution only "as provided in this section." 28 U.S.C. 1610(g)(1). Consequently, even if a creditor invokes subsection (g) to pierce the veil, the creditor still must satisfy one of the exceptions to immunity "provided in" Section 1610 to execute against that property.

In short, subsection (g) consists of one sentence with one subject: veil piercing. It does not also take the very different step of enabling a creditor to execute a judgment without regard to the exceptions to immunity provided in Section 1610. Instead, subsection (g) works together with Section 1610's existing exceptions by magnifying their impact: It makes more entities' property amenable to execution under those exceptions, and

thereby places more property within the potential reach of victims of terrorism.

For example, before subsection (g) was enacted in 2008, a victim's family with a judgment against Iran under the terrorism exception could not invoke subsection (a)(7) to execute against California real estate that was owned by a wholly-owned subsidiary of Bank Saderat Iran, an instrumentality of Iran. *Flatow* v. *Islamic Republic of Iran*, 308 F.3d 1065, 1067, 1075 (9th Cir. 2002), cert. denied, 538 U.S. 944 (2003). The judgment was against Iran, not the Bank; and applying the *Bancec* factors, the Ninth Circuit held that the family had not overcome *Bancec*'s presumption that the Bank was a separate juridical entity. *Id.* at 1071-1074. Accordingly, the family could not treat the property as Iran's. Subsection (g) removes that barrier to execution: It would enable treatment of the Bank subsidiary's real estate for purposes of subsection (a)(7) as if it were the state's own property. See 154 Cong. Rec. 500 (2008) (statement of Sen. Lautenberg) (explaining that subsection (g) would abrogate *Flatow*).

Similarly, before subsection (g) was enacted, victims' families that held judgments against Cuba under the terrorism exception could not use Section 1610 to garnish commercial debts owed by Empresa de Telecomunicaciones de Cuba, S.A. (ETECSA), an instrumentality of Cuba. *Alejandre* v. *Telefonica Larga Distancia de Puerto Rico, Inc.*, 183 F.3d 1277, 1279-1280, 1283 (11th Cir. 1999). Without deciding whether Section 1610 would permit execution if they pierced the veil, the court held that the families could not do so: The judgment was against Cuba, not ETECSA; and applying the *Bancec* factors, the court held that the families

had not overcome the presumption of separateness. *Id.* at 1282-1290. Subsection (g) removes that barrier.

Unlike in cases like *Flatow* and *Alejandre*, however, subsection (g)'s veil-piercing rule does not help petitioners in this case because the corporate veil is not a barrier to execution here. Petitioners' judgment is against Iran, and Iran itself (not an agency or instrumentality) owns the Persepolis Collection. Petitioners instead are trying to use subsection (g) to circumvent the existing limitations on executing against a foreign state's property that are set forth in Section 1610. They cannot do so, because subsection (g) subjects property to execution only "as provided in th[at] section." 28 U.S.C. 1610(g)(1).

No other subsection of Section 1610 "provide[s]" for execution here. Subsection (a) can potentially provide for execution of a judgment obtained under the current version of the terrorism exception, and petitioners have obtained such a judgment against Iran. See 28 U.S.C. 1610(a)(7). But that exception reaches only property with the requisite commercial nexus, which the Collection lacks. Pet. App. 16-21. It is undisputed that subsections (b), (c), (d), and (e) do not provide for execution here. See Pets. Br. 39. Nor does subsection (f) provide for execution, because the President has exercised his authority to waive subsection (f)(1). See pp. 4-5, *supra*; Pet. App. 33-34. The court of appeals therefore correctly held that petitioners cannot execute against the Collection.

B. Section 1610(g) Subjects Property To Execution "As Provided In This Section," Not "Regardless Of What Is Provided In This Section"

1. Petitioners' interpretation of subsection (g) as a freestanding exception to execution immunity is fundamentally inconsistent with Congress's express direction that property is subject to execution only "as provided in this section." 28 U.S.C. 1610(g)(1). On petitioners' interpretation, that phrase would be essentially meaningless because the statute would function exactly the same way even if it were deleted. Indeed, petitioners effectively read "as provided in this section" to mean "regardless of what is provided in this section."

The notion that Congress said "as provided" when it meant "regardless of what is provided" is particularly implausible here. In subsection (g), Congress expressly stated that a terrorism creditor may pierce the veil "regardless of" the *Bancec* factors. 28 U.S.C. 1610(g)(1). If Congress had intended to allow such a creditor also to execute against property even when none of Section 1610's exceptions were satisfied, one would expect Congress to have said so using parallel language, such as by stating that property is subject to execution "regardless of" the *Bancec* factors *and* "regardless of the provisions of this section." Congress did not do so. Congress's choice to expressly set aside some barriers to execution (the *Bancec* inquiry), but not others (the limitations "provided in this section"), is appropriately treated as deliberate. Cf. *Department of Homeland Sec.* v. *MacLean*, 135 S. Ct. 913, 919 (2015) ("Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another.").

The textual differences between subsections (f) and (g) reinforce this reading. Subsection (f)(1) provides

that, absent Presidential waiver, certain blocked property "shall be subject to execution" of a terrorism judgment "[n]otwithstanding any other provision of law." 28 U.S.C. 1610(f)(1) and (3). And unlike subsection (g), subsection (f)(1) does not further state that such property is subject to execution only "as provided in this section." Subsection (f)(1) is thus naturally read to create a freestanding exception that can allow execution even when no other provision of Section 1610 permits it. By contrast, Congress did not say that subsection (g) applies "[n]otwithstanding any other provision of law." To the contrary, Congress specified that subsection (g) makes property subject to execution only "as provided in this section," 28 U.S.C. 1610(g)(1), thus affirmatively establishing that subsection (g) is *not* freestanding. Rather, subsection (g) simply provides for veil piercing to make more entities' property subject to execution as provided elsewhere in Section 1610.

2. Petitioners make multiple attempts to explain the meaning of the phrase "as provided in this section," but none is persuasive.

a. Petitioners first contend (Br. 44) that subsection (g)'s reference to "this section" actually refers solely to subsection (f). See *Bennett* v. *Islamic Republic of Iran*, 825 F.3d 949, 959 (9th Cir. 2016), petition for cert. pending, No. 16-334 (filed Sept. 12, 2016). But as the court of appeals explained, "it would be very odd" for Congress to refer solely to subsection (f) in that way. Pet. App. 27. Congress would not be expected to say "this section" if it really meant "as provided in *sub*section (f)." *Id.* at 33. Indeed, Congress demonstrated in subsection (g) that it knew how to write precise cross-references. See 28 U.S.C. 1610(g)(1), (2), and (3) ("Subject to para-

graph (3), the property of a foreign state"; "Any property * * * to which paragraph (1) applies"; "Nothing in this subsection shall be construed.").

Petitioners admit (Br. 37, 44) that it is "strained" to interpret "this section" to mean "that other subsection." They argue, however, that the court of appeals' interpretation suffers from the same problem by interpreting "this section" to refer solely to subsections (a) and (b). But the court of appeals did not adopt that interpretation. Rather, the court correctly concluded that "[t]he word 'section' must mean what it says: Subsection (g) modifies *all* of § 1610." Pet. App. 27; cf. *NLRB* v. *SW Gen., Inc.*, 137 S. Ct. 929, 938-939 (2017). The court looked to subsection (a) in particular when analyzing potential exceptions because that was the only exception petitioners contended was applicable. See Pet. App. 14.

Petitioners' construction is not merely implausible, but also would be self-defeating. Even if "as provided in this section" meant only "as provided in subsection (f)," petitioners still would be unable to execute on the property here because subsection (f) does not provide for execution in this case. Subsection (f)'s only provision that potentially authorizes execution (paragraph (1)) was waived by the President in 2000 before it ever went into effect, and well before Congress enacted subsection (g) in 2008. See pp. 4-6, *supra*. So subsection (f)(1), "being inoperative from the start, does not allow *any* form of execution." Pet. App. 34.[3]

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[3] Paragraph (f)(2) has not been waived. See *Bennett*, 825 F.3d at 959-960 & n.5. But that paragraph does not help petitioners because it does not provide for execution; it states that the government "should make every effort" to assist terrorism judgment creditors in identifying attachable property. 28 U.S.C. 1610(f)(2).

b. For the first time in this litigation, petitioners now contend in the alternative that the phrase "as provided in this section" is a mistake, asserting that it refers not to the section of the U.S. Code where Congress codified it, 28 U.S.C. 1610, but to the section of the Public Law that enacted it, Section 1083 of the NDAA. This argument lacks merit.

Title 28 of the U.S. Code has "been enacted into positive law"; it is not merely an editorial compilation that is prima facie evidence of the law. 1 U.S.C. 204(a); see Act of June 25, 1948, ch. 646, § 1, 62 Stat. 869. Petitioners do not point to any textual or contextual indication that "this section" in subsection (g) means anything other than Section 1610 of Title 28 as enacted into positive law. Petitioners thus are merely speculating that Congress made a drafting error. But "when [a] statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie* v. *United States Tr.*, 540 U.S. 526, 534 (2004) (quoting *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)).

In any event, Congress made no error. In Section 1083(a) of the NDAA, Congress added the current version of the terrorism exception (Section 1605A) to "title 28, United States Code." § 1083(a)(1), 122 Stat. 338. Congress then made "Conforming Amendments" to the U.S. Code, *id.* § 1083(b), 122 Stat. 341, including by adding subsection (g) to 28 U.S.C. 1610. Specifically, Congress provided that "Section 1610 of title 28, United States Code is amended" by adding, in quotation marks, the full text of subsection (g). *Id.* § 1083(b)(3)(D), 122 Stat. 341-342. Congress thus inserted "as provided in this section" directly into "Section 1610 of title 28."

Ibid. "[T]his section" therefore plainly refers to "Section 1610 of title 28." *Ibid.*

Other amendments to the U.S. Code reinforce that this choice was deliberate. When Congress was amending the U.S. Code, it consistently used "section," "subsection," or "paragraph" to refer to the U.S. Code. *E.g.*, NDAA § 1083(a)(1), 122 Stat. 338-340 (adding 28 U.S.C. 1605A(a)(2), (c), (d), (e)(1), (e)(2), (f), (g), and (h)); *id.* § 1083(b)(1)(C), (b)(3)(C) and (D), 122 Stat. 341-342. By contrast, Congress used "this section" to refer to the Public Law only when Congress was not changing the U.S. Code at all. See Pets. Br. 47 (recognizing this pattern); *e.g.*, NDAA § 1083(c)(1), 122 Stat. 342. And when Congress intended for the U.S. Code to refer to a section of the Public Law, it did so expressly: Congress inserted 28 U.S.C. 1605A(a)(2)(A)(i)(II), which refers to "an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act." NDAA § 1083(a)(1), 122 Stat. 339.

There is thus no sound basis for concluding that Congress mistakenly said "this section" in 28 U.S.C. 1610(g) when Congress was otherwise so precise. Petitioners note (Br. 46) that an earlier version of Section 1610(g) erroneously referred to a "judgment entered under this section," when it really meant a judgment entered under Section 1605A. But as petitioners recognize (*ibid.*), Congress corrected that language before the bill was enacted into law. As enacted, subsection (g) refers to a judgment "entered under section 1605A." 28 U.S.C. 1610(g)(1). That drafting history thus undermines petitioners' argument: It shows that Congress carefully ed-

ited the references in subsection (g) to correct any mistakes, but did *not* change "as provided in this section." That further underscores that Congress meant what it said.

Petitioners' speculation that "as provided in this section" refers to the NDAA also would make that phrase effectively meaningless. Petitioners assert (Br. 48) that it indicates that subsection (g) "override[s] the prohibition on punitive damages contained in [28 U.S.C.] 1606." But no such prohibition applies here in the first place. The prohibition on punitive damages applies only to a claim where "a foreign state is not entitled to immunity under section 1605 or 1607." 28 U.S.C. 1606. A person needs to have a judgment under a different section of the U.S. Code (Section 1605A) in order to invoke subsection (g). See 28 U.S.C. 1610(g)(1). Section 1606's prohibition on punitive damages is thus inapplicable in subsection (g) cases. Indeed, Section 1605A's private right of action expressly allows "punitive damages." 28 U.S.C. 1605A(c). And it would be incongruous for Section 1610(g) to say anything about the kinds of damages that are available in the underlying suit, because Section 1610 comes into play only after the suit is over and the plaintiff is seeking to enforce the judgment.

c. Petitioners' amici offer yet another explanation, contending that "as provided in this section" refers only to Section 1610's procedures but not its substantive requirements. See Former Officials Amici Br. 23-25. But Section 1610 does not provide any procedures that would ever apply to execution under petitioners' interpretation of subsection (g). The only provision in Section 1610 that establishes procedures for execution is subsection (c), which requires notice in certain cases—

but it applies only to "execution referred to in subsections (a) and (b)." 28 U.S.C. 1610(c). Under petitioners' interpretation, however, nobody using subsection (g) would ever execute under subsections (a) or (b), because those same creditors could reach all the same property and more through subsection (g) itself. See pp. 22-25, *infra*. Subsection (c)'s procedures thus would never apply in a subsection (g) case. Amici also point (Br. 24) to subsection (f)(2), but that does not establish procedures for execution at all; it encourages federal agencies to assist plaintiffs in locating executable assets. 28 U.S.C. 1610(f)(2); see p. 18 n.3, *supra*. Amici's interpretation is thus functionally equivalent to deleting "as provided in this section" from subsection (g).

C. Petitioners' Interpretation Of Section 1610(g) Would Defeat Limitations Congress Imposed On The Same Creditors In Section 1610(a)(7)

Petitioners' interpretation of Section 1610(g) is further flawed because it would render other portions of the FSIA "inoperative or superfluous, void or insignificant." *Corley* v. *United States*, 556 U.S. 303, 314 (2009) (citation omitted). In particular, it would render superfluous Congress's decision in Section 1610(a)(7) to allow creditors under the current version of the terrorism exception to execute only against property with a commercial nexus, because those same creditors could defeat that critical limitation simply by invoking subsection (g) instead of subsection (a).

1. Subsection (a)(7) provides that a foreign state's property is not immune from execution if the plaintiff is enforcing a judgment that "relates to a claim for which the foreign state is not immune under section 1605A"—that is, under the current version of the terrorism

exception—*and* the property is used in commercial activity in the United States. 28 U.S.C. 1610(a)(7). Under the court of appeals' interpretation, subsections (a)(7) and (g) work together to enable holders of judgments under the current terrorism exception to pursue property used in commercial activity (via subsection (a)(7)), and to do so whether that property is owned by the foreign state or an agency or instrumentality, without need for a *Bancec* inquiry (via subsection (g)).

Petitioners' interpretation of subsection (g), however, would make the two provisions work at cross-purposes by enabling creditors under the current version of the terrorism exception to use subsection (g) to defeat subsection (a)(7)'s crucial limitation. Subsection (a)(7) allows a creditor under the current version of the terrorism exception to pursue property *only if it is used in commercial activity*—but petitioners would allow those same creditors to pursue property without that limitation simply by invoking a different subsection of Section 1610 (subsection (g) instead of (a)). Under petitioners' interpretation, subsection (g) would thus render subsection (a)(7)'s commercial-nexus requirement wholly superfluous for those creditors.

Petitioners have no answer. They merely note (Br. 41-44) that subsection (g) does not render superfluous Congress's reference in subsection (a)(7) to the *former* version of the terrorism exception as well. See 28 U.S.C. 1610(a)(7). But as set forth above, the problem is that petitioners' interpretation renders superfluous Congress's express imposition of a commercial-nexus requirement on individuals holding a judgment under the *current* version, Section 1605A. *Ibid.*

Indeed, petitioners' interpretation of subsection (g) would have made subsection (a)(7) entirely irrelevant

at the time Congress adopted those provisions. The same statute—the NDAA—amended subsection (a)(7) to refer to Section 1605A *and* added subsection (g). § 1083(b)(3)(A) and (D), 122 Stat. 341. And at the time, subsection (a)(7) referred *solely* to the current version of the terrorism exception. *Id.* § 1083(b)(3)(A), 122 Stat. 341.[4] Thus, under petitioners' interpretation, subsection (g)'s enactment rendered subsection (a)(7) completely superfluous—even though Congress made substantive changes to subsection (a)(7) at the very same time. But Congress does not usually "give with one hand what it takes away with the other." *Greenlaw* v. *United States*, 554 U.S. 237, 251 (2008).[5]

2. Some of petitioners' amici contend that subsection (a)(7)'s reference to the current version of the terrorism exception (Section 1605A) is not superfluous because, they assert, creditors who relied on Section 1605A to obtain jurisdiction but then invoked a state-

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[4] Congress later restored the reference in Section 1610(a)(7) to the former version of the terrorism exception. See Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, § 502(e)(1)(A), 126 Stat. 1260.

[5] If subsection (g) applies when a judgment is entered against an agency or instrumentality, then petitioners' interpretation of subsection (g) would also cause the same superfluity problem for subsection (b)(3). That provision enables creditors under the current version of the terrorism exception to execute against the property of an agency or instrumentality that is engaged in commercial activity. 28 U.S.C. 1610(b)(3). Under petitioners' interpretation of subsection (g), however, a creditor of such a judgment against an agency or instrumentality could use subsection (g) to defeat subsection (b)(3)'s commercial-nexus requirement. This case provides no occasion for deciding whether or how subsection (g) applies in such a case, however, because the judgment here is against the foreign state itself.

law cause of action can use subsection (a)(7) for execution, but cannot use subsection (g). See Victims of Terrorism Amici Br. 24-25. Specifically, they contend that such a judgment is not "entered under Section 1605A," as required to invoke subsection (g). *Ibid.* (quoting 28 U.S.C. 1610(g)(1)). But that is incorrect. Section 1605A provides that a "court *shall hear a claim under this section*" if the requirements for jurisdiction are met, 28 U.S.C. 1605A(a)(2) (emphasis added), and jurisdiction does not depend on the source of the plaintiff's cause of action, 28 U.S.C. 1605A(a)(1). Accordingly, whenever a court has jurisdiction under Section 1605A and enters judgment, that judgment is "entered under section 1605A" and the plaintiff can invoke Section 1610(g). The source of the cause of action is irrelevant.

3. a. Petitioners contend (Br. 37-39) that the court of appeals' interpretation renders superfluous subsection (g)'s references to the "the property of a foreign state against which a judgment is entered under section 1605A" and to the "property of an agency or instrumentality of such a state." 28 U.S.C. 1610(g)(1). They argue that subsection (g) could instead consist solely of the "separate juridical entity" clause—*i.e.*, it could simply say that a creditor can execute against "property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity." *Ibid.* But Congress's clear purpose in enacting subsection (g) was to enable a creditor with a judgment against a foreign state under the current version of the terrorism exception to execute against property of (1) the state; (2) its agencies or instrumentalities; and (3) separate juridical entities owned by the state or its agencies or instrumen-

talities, if an exception elsewhere in Section 1610 provides for execution. The natural way to say that is to identify all three categories expressly.

Congress also had good reason to specify each category. First, subsection (g) specifies the state itself because that is how Congress identified the subset of cases in which subsection (g) permits veil piercing: When there is "property of a foreign state against which a judgment is entered under section 1605A." 28 U.S.C. 1610(g)(1). Without that limitation, subsection (g) would abrogate the *Bancec* inquiry in *all* cases, not merely terrorism cases. Second, Congress had obvious reason to specify that subsection (g) reaches agencies and instrumentalities: It was the decision in *Flatow* that prompted the proposal to override the *Bancec* inquiry in terrorism cases, and both *Flatow* and *Bancec* involved property of agencies or instrumentalities. See *Bancec*, 462 U.S. at 621; *Flatow*, 308 F.3d at 1071 & n.10. Third, Congress needed to include the "separate juridical entity" category in order to extend veil piercing to corporate subsidiaries of an agency or instrumentality (which are not ordinarily themselves agencies or instrumentalities, see *Dole Food*, 538 U.S. at 473-478), and corporate subsidiaries of the state itself that do not qualify as agencies or instrumentalities (which occurs if the subsidiary is a citizen of the United States or a third country, see 28 U.S.C. 1603(b)(3)). Subsection (g) is thus a comprehensive veil-piercing provision.

Petitioners contend (Br. 38) that the "agencies or instrumentalities" category is unnecessary because the "separate juridical entity" category would cover agencies and instrumentalities whenever they are separate juridical entities, and because veil piercing is unnecessary when the entity is *not* such a separate entity. But

under the FSIA's definition, an agency or instrumentality must be a "separate legal person, corporate or otherwise." 28 U.S.C. 1603(b)(1). The second category in subsection (g) clearly refers to an "agency or instrumentality" as so defined. And it is unlikely that Congress would enact subsection (g) without expressly saying that it reaches both the state and its agencies and instrumentalities specifically, when the primary purpose of subsection (g) is to reach both the state and its agencies and instrumentalities. The third category then expands veil piercing still further by covering certain entities that do not satisfy the definition of "agency or instrumentality." That structure is sensible, not superfluous.

b. Petitioners also contend (Br. 32) that the *Bancec* factors listed in subsection (g) "cannot be reconciled with a requirement that the property being attached must be used by the foreign state judgment debtor for commercial activities." But that argument fundamentally misperceives how subsection (g) works. When subsection (g) pierces the veil and causes the property of an agency or instrumentality to be treated as the state's property for purposes of execution, the proper inquiry under subsection (a)(7) is not to ask whether the property is used for commercial activity by the *state*. Rather, the question is whether it is used for commercial activity by *that agency or instrumentality*.

Given Congress's purpose of making it easier for victims of terrorism to pierce the veil, Congress sensibly directed courts that they may proceed "regardless of" factors they otherwise would have considered. *E.g.*, 28 U.S.C. 1610(g)(1)(C) (instructing courts not to consider "the degree to which officials of that government

manage the property or otherwise control its daily affairs"). There is nothing incongruous about using one inquiry in subsection (g) and another in subsection (a), as they are asking different questions for different reasons.[6]

D. Petitioners' Reliance On The Statutory Purpose And Legislative History Is Misplaced

It is undisputed that Congress intended for subsection (g) to "expand successful plaintiffs' options for collecting judgments against state sponsors of terrorism." *Bennett*, 825 F.3d at 961. But that general purpose does not help resolve the question presented here, because both competing interpretations advance that purpose: The court of appeals' interpretation "expand[s] successful plaintiffs' options for collecting [such] judgments," *ibid.*, by making it easier to pierce the veil.

The question presented here is *how far* Congress went in advancing that purpose, and in particular whether Congress intended (1) to provide for veil piercing *and* (2) to make property subject to execution regardless of the other requirements of Section 1610. As set forth above, Section 1610(g)'s text and context unambiguously establish that Congress took the first step but not the second: It made property of different entities subject to execution "regardless of" the *Bancec* factors, but only "as provided in th[at] section." 28 U.S.C. 1610(g)(1). Because the text is clear, "reliance on legislative history is unnecessary." *Mohamad* v. *Palestinian Auth.*, 566 U.S. 449, 458 (2012) (citation omitted).

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[6] Petitioners are wrong to assert (Br. 44-45) that blocked property "cannot be 'used' by the foreign state or its agencies" within the meaning of subsection (a)(7). Blocked assets could have been used in commercial activity until they were blocked.

In any event, the legislative history does not support petitioners. Just as the text of subsection (g) is focused on a single topic—veil piercing—the legislative history of subsection (g) is focused on that one topic as well. *E.g.*, H.R. Conf. Rep. No. 447, 110th Cong., 1st Sess. 1001-1002 (2007) (Conf. Rep.) (discussing veil piercing and protections for third-party joint property holders); 154 Cong. Rec. at 500 (statement of Sen. Lautenberg) (explaining that the bill would remedy "misapplication of the 'Bancec doctrine'"); *ibid.* (giving *Flatow* as an example of such misapplication); 151 Cong. Rec. 12,869 (2005) (statement of Sen. Specter) (it would "chang[e] the legal standard of the Bancec doctrine"). There is no similar indication in the legislative history that Congress even considered allowing execution without regard to a commercial nexus or the other limitations in Section 1610, notwithstanding that dispensing with all such limitations would be a very different—and more dramatic—step.

Petitioners primarily rely (Br. 57) on a statement in the Conference Report that subsection (g) would "permit[] any property in which the foreign state has a beneficial ownership to be subject to execution of [a] judgment." Conf. Rep. at 1001. But the lone word "any" cannot bear the weight petitioners place upon it. That Report does not even mention the commercial-activity requirement or other limitations on execution under Section 1610, much less say that subsection (g) would override them. Indeed, petitioners acknowledge that "any" is an overstatement that must be qualified: Petitioners agree (Br. 17; Pet. 13) that subsection (g) does not circumvent the FSIA's prohibitions against executing upon central bank, diplomatic, or consular property. See 28 U.S.C. 1609, 1611(b); Vienna Convention on

Diplomatic Relations, Art. 22(3), *done* Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Imprecise language in one passage of the legislative history provides no sound basis for concluding that subsection (g)'s reach is limited by Sections 1609 and 1611—yet not by anything in Section 1610—when subsection (g) is expressly tied to what is "provided in" Section 1610. 28 U.S.C. 1610(g)(1); cf. *Milner* v. *Department of Navy*, 562 U.S. 562, 572 (2011) (refusing to "allow[] ambiguous legislative history to muddy clear statutory language").

At bottom, petitioners' argument boils down to the position that their interpretation would be more favorable to victims of terrorism. But "no legislation pursues its purposes at all costs." *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987) (per curiam). And this Court's function is "to give [a] statute the effect its language suggests, however modest that may be; not to extend it to admirable purposes it might be used to achieve." *Morrison* v. *National Austl. Bank Ltd.*, 561 U.S. 247, 270 (2010); *e.g.*, *Mohamed*, 566 U.S. at 461 ("Congress has seen fit to proceed in more modest steps."); *Ministry of Def. & Support for Armed Forces of Islamic Republic of Iran* v. *Elahi*, 556 U.S. 366, 383 (2009) (rejecting an interpretation of TRIA that would have been more favorable to a victim of Iranian terrorism; stating that "Congress had a more complicated set of purposes in mind").

Here, Congress enacted Section 1610's limitations on execution for good reason. The "judicial seizure" of a foreign state's property "may be regarded as an affront to its dignity and may . . . affect our relations with it." *Republic of Philippines* v. *Pimentel*, 553 U.S. 851, 866 (2008) (quoting *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 35-36 (1945)). Indeed, "at the time the FSIA

was passed, the international community viewed execution against a foreign state's property as a greater affront to its sovereignty than merely permitting jurisdiction over the merits of an action." *Connecticut Bank of Commerce* v. *Republic of Congo*, 309 F.3d 240, 255-256 (5th Cir. 2002); see *Immunities of Foreign States: Hearing on H.R. 3493 Before the Subcomm. on Claims and Governmental Relations of the House Comm. on the Judiciary*, 93d Cong., 1st Sess. 14, 22 (1973) (statement of Acting Legal Adviser Brower), Ian Brownlie, *Principles of Public International Law* 346 (5th ed. 1998). The FSIA's exceptions to execution immunity in turn are "narrower" than its exceptions to jurisdictional immunity. *Republic of Argentina* v. *NML Capital, Ltd.*, 134 S. Ct. 2250, 2256 (2014).

Even in the context of actions against state sponsors of terrorism, execution could provoke serious foreign policy consequences, including impacts on the treatment of the United States' own property abroad. Execution could also lead to the diversion of assets that might otherwise be used to serve critical United States foreign policy objectives, such as when a formerly terrorist country has undergone a regime change. For example, President George W. Bush initially vetoed the NDAA because of concern that its execution provisions "would imperil billions of dollars of Iraqi assets at a crucial juncture in that nation's reconstruction efforts." *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 853-854 (2009) (citation omitted). Congress then added a provision allowing the President to waive the relevant provisions as to Iraq, which the President did immediately upon signing the bill into law. *Ibid.*

Section 1610's limitations on execution exist to protect against these kinds of potentially adverse foreign-

policy repercussions. For example, Section 1610(a) limits execution to property that is used for commercial activity in the United States. 28 U.S.C. 1610(a). That exception reflects the idea that "subjecting foreign governments to the rule of law in their commercial dealings presents a much smaller risk of affronting their sovereignty" and embroiling the United States in a foreign relations conflict "than would an attempt to pass on the legality of their governmental acts." *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 703-704 (1976) (plurality opinion). And although subsection (f) is not limited to commercial property, Congress limited it to property that is blocked or otherwise regulated under certain sanctions programs—and Congress made execution subject to Presidential waiver. See 28 U.S.C. 1610(f)(3). Congress thus ensured that the Executive can eliminate or fine-tune execution in light of foreign policy concerns. The President has done just that, waiving subsection (f) on the ground that it "would impede the ability of the President to conduct foreign policy in the interest of national security and would, in particular, impede the effectiveness of such prohibitions and regulations upon financial transactions." 65 Fed. Reg. at 66,483.

The property at issue here consists of ancient Persian artifacts, documenting a unique aspect of Iran's cultural heritage, that were lent to a U.S. institution in the 1930s for academic study. Iran has never used the Collection for commercial activity in the United States; the Collection is not blocked; and it is not subject to execution under subsection (f). Execution against such unique cultural artifacts could cause affront and reciprocity problems that are different in kind from execution under any other provision of Section 1610.

If Congress were going to take the step of enabling execution even against property that is *not* commercial, *not* blocked, and *not* otherwise subject to execution under Section 1610, one would expect Congress to have said so expressly after squarely considering the ramifications of that decision. Congress did neither. Subsection (g) subjects additional property to execution only "as provided in th[at] section." 28 U.S.C. 1610(g)(1).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
CHAD A. READLER
Acting Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
HASHIM M. MOOPPAN
Deputy Assistant Attorney General
ZACHARY D. TRIPP
Assistant to the Solicitor General
SHARON SWINGLE
BENJAMIN M. SHULTZ
Attorneys

RICHARD C. VISEK
Acting Legal Adviser
Department of State

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APPENDIX

1. 28 U.S.C. 1330 provides:

Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

2. 28 U.S.C. 1331 provides:

Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

3. 28 U.S.C. 1602 provides:

Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

4. 28 U.S.C. 1603 provides:

Definitions.

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or

other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

5. 28 U.S.C. 1604 provides:

Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

6. 28 U.S.C. 1605 provides:

General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or

(D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem

whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[(e), (f) Repealed. Pub. L. 110-181, div. A, title X, § 1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341.]

(g) LIMITATION ON DISCOVERY.—

(1) IN GENERAL.—(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A or section 1605B, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies

would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.—(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.—The Court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(h) JURISDICTIONAL IMMUNITY FOR CERTAIN ART EXHIBITION ACTIVITIES.—

(1) IN GENERAL.—If—

(A) a work is imported into the United States from any foreign state pursuant to an agreement that provides for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or one or more cultural or educational institutions within the United States;

(B) the President, or the President's designee, has determined, in accordance with subsection (a) of Public Law 89-259 (22 U.S.C. 2459(a)), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and

(C) the notice thereof has been published in accordance with subsection (a) of Public Law 89-259 (22 U.S.C. 2459(a)),

any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

(2) EXCEPTIONS.—

(A) NAZI-ERA CLAIMS.—Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;

(iii) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(iv) a determination under clause (iii) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(B) OTHER CULTURALLY SIGNIFICANT WORKS.—In addition to cases exempted under subparagraph (A), paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in

which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a foreign government as part of a systematic campaign of coercive confiscation or misappropriation of works from members of a targeted and vulnerable group;

(iii) the taking occurred after 1900;

(iv) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(v) a determination under clause (iv) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(3) DEFINITIONS.—For purposes of this subsection—

(A) the term "work" means a work of art or other object of cultural significance;

(B) the term "covered government" means—

(i) the Government of Germany during the covered period;

(ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period;

(iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and

(iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

(C) the term "covered period" means the period beginning on January 30, 1933, and ending on May 8, 1945.

7. 28 U.S.C. 1605A provides:

Terrorism exception to the jurisdictional immunity of a foreign state

(a) IN GENERAL.—

(1) NO IMMUNITY.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) CLAIM HEARD.—The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign

state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

(b) LIMITATIONS.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) PRIVATE RIGHT OF ACTION.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) ADDITIONAL DAMAGES.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) SPECIAL MASTERS.—

(1) IN GENERAL.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) TRANSFER OF FUNDS.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) APPEAL.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) PROPERTY DISPOSITION.—

(1) IN GENERAL.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) NOTICE.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) ENFORCEABILITY.—Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) DEFINITIONS.—For purposes of this section—

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

8. 28 U.S.C. 1606 provides:

Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

9. 28 U.S.C. 1607 provides:

Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

10. 28 U.S.C. 1608 provides:

Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of

the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

11. 28 U.S.C. 1609 provides:

Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

12. 28 U.S.C. 1610 provides:

Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), (5), or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the

Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

13. 28 U.S.C. 1611 provides:

Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank,

authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.